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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th June 2009

No. 5296—li/1(B)-1/2008(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th May 2009 in Industrial Disputes Case No. 27/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Secretary, Nuapatna No. 2 Weavers' Co-operative Societies Ltd., At/P. O. Nuapatna, P. S. Tigiria, Dist. Cuttack and Shri Benudhar Mohapatra, S/o. Late Harekrushna Mohapatra, At/P. O. Nuapatna, P. S. Tigiria, Dist. Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 27 OF 2008

Dated the 7th May 2009

Present :

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The Secretary, Nuapatna No. 2 . . . First Party—Management
Weavers' Co-operative Societies Ltd.,
At/Post Nuapatna, P. S. Tigiria,
Dist. Cuttack.

And

Shri Benudhar Mohapatra, . . . Second Party—Workman
S/o Late Harekrushna Mohapatra,
At/Post Nuapatna, P. S. Tigiria,
Dist. Cuttack.

Appearances :

None	.. For First Party—Management
Shri S. K. Das, Advocate	.. For Second Party—Workman

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 5116—li/1(B)-1/2008-LE., dated the 30th April 2008 :—

“Whether the termination of services of Shri Benudhar Mohapatra, Accountant by the management of M/s Nuapatna No. 2 Weavers’ Co-operative Societies Ltd. At/ Post Nuapatna, P. S. Tigiria, District Cuttack with effect from the 6th April 2007 is legal and/or justified ? If not, what relief Shri Mohapatra is entitled to ?”

2. The case of the workman in brief is that he was initially appointed as an Assistant Accountant under the management of M/s Nuapatna No. 2 Weavers’ Co-operative Societies Ltd. w.e.f. the 1st April 1982 on a consolidated salary of Rs. 200 per month and by efflux of time he was promoted to hold the post of Accountant in the year 1995 and accordingly his wage was revised and the last wage drawn by the workman was Rs. 2,050 per month. It is stated that considering his performance, the workman was given the duty of Storekeeper from August, 1998 to April, 2006. It is stated that pursuant to the decision taken in the Annual General Body Meeting of the Society, the workman was relieved from the duty of Storekeeper w.e.f. the 21st April 2006 and was allowed to work as Accountant of the Society and while working so on the 6th April 1997, he was discharged from service without there being any reason or rhyme. It is stated that soon after his discharge from service although the workman represented his higher authorities as well as the management stating that his discharge from service is neither legal nor justified yet it did not yield any result and ultimately he ventilated his grievance before the A. L. O., Choudwar, who conciliated the matter and on failure thereof the present reference was made. It is alleged that the termination of service of the workman is illegal, unilateral biased and has been brought into effect without compliance to the principles of natural justice and in violation of the statutory provisions of the Industrial Disputes Act. It is further alleged that even the workman was not asked to explain for any dereliction in duty before his removal from service. According to the workman, his removal from service being contrary to the provisions of the Industrial Disputes Act, the same be declared as illegal and unjustified and taking into consideration the fact that after removal from service, the workman is not employed elsewhere and is striving hard to sustain his livelihood along with his family members, Award may be passed reinstating him in service with full back wages.

3. The management filed its written statement asserting therein *inter alia* that the reference of the dispute is not maintainable and further the dismissal of the workman needs no interference as the same was passed basing on the decision of the General Body Meeting held on the 28th March 2007 wherein it was resolved that due to his unsatisfactory work, the workman was deserved for his discharge from his service. It is stated specifically that during

the incumbency of the workman, a shortage of yarn amounting to the tune of Rs. 8,120 was noticed in the stock and the same being a misconduct he has rightly been discharged from service as per the Bye-laws of the Society. It is pleaded that the action of the management being not 'retrenchment', there was absolutely no necessity to comply with the provisions of the Industrial Disputes Act. The management in the premises has prayed to answer the reference in the negative as against the workman.

4. The workman filed a rejoinder to the written statement filed by the management wherein he has pleaded that the reference is maintainable and that his termination from service squarely comes within the purview of 'retrenchment' as defined u/s 2(oo) of the Industrial Disputes Act for the sole reason that prior to his removal from service, he was neither charge-sheeted nor the misconduct alleged were ever enquired into by affording reasonable opportunity to him. In the circumstances, he has prayed to answer the reference in his favour.

5. On the basis of the pleadings of the parties, the only issue which has been framed in this case is :—

ISSUES

"Whether the termination of services of Shri Benudhar Mohapatra, Accountant by the management of M/s Nuapatna No. 2 Weavers Co-operative Societies Ltd., At/P.O. Nuapatna, P.S. Tigiria, Dist. Cuttack with effect from the 6th April 2007 is legal and/or justified ? If not, what relief Shri Mohapatra is entitled to ?"

6. During hearing of the dispute, the management did not participate as a result it was set *ex parte* vide Order No. 12, dated the 13th April 2009. Thereafter, the workman submitted his evidence on affidavit and brought on record 11 documents which have been marked as Exts. 1 to 11.

7. It is being the settled principle of law that termination of service of a workman for any reason whatsoever would amount to 'retrenchment' excepting for a misconduct in which he was awarded with the punishment of removal as a consequence of the proved charges. In the instant case, the workman in his uncontested evidence has deposed with reference to the documentary evidence marked Exts. 1 to 11 that the management without framing any charge or holding any enquiry into the alleged misconduct has imposed upon him the major penalty of discharge from service. It also reveals from his testimony that not even an explanation was called for from him to explain about his conduct. A conjoint reading of the claim statement with the evidence both oral and documentary adduced by the workman would reveal that the workman has fully corroborated his stand taken in the claim statement with regard to the action taken by the management. It also stands admitted in the written statement of the management that as the workman was found to have committed misconduct, it did away with the employment of the workman as per the decision of the General Body Meeting held on the 28th March 2007 and accordingly discharged him from service w.e.f. the 6th April 2007. In view of the above, it becomes clear that without affording the workman a chance of hearing and to place his case in support of his defence, he was imposed with the major penalty of discharge from service. As it reveals, the management has completely ignored the principle

of 'Audi Alteram Partem' while dealing with the misconducts, if any alleged against the workman. In connection with the above, the decision reported in 2003 (98) FLR-1192 (Bhupinder Pal Singh *Vrs.* Director General of Civil Aviation and others) may be referred to wherein Their Lordships of the Apex Court have held that without affording an opportunity of hearing the orders passed in removing the delinquent from the post is a clear violation of the principles of natural justice and consequently ordered for restoration of the previous position of the delinquent along with compensation.

8. In the instant case as already discussed, no opportunity to the workman was afforded to prove his innocence before infliction of the punishment and as such, the orders passed as per Ext. 1 cannot be sustained.

9. In the result, therefore, the action of the management in terminating the services of the workman is held to be neither legal nor justified and accordingly, the management is directed to reinstate the workman in service forthwith. In view of the assertion of the workman and corroboration thereof in his evidence on affidavit that since the date of his removal from service, he is not employed elsewhere, the management is directed to pay him a lump sum amount of Rs. 20,000 (Rupees Twenty Thousand only) towards back wages. The Award passed be implemented within a period of two months from the date of its publication in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
7-5-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
7-5-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government